D.B. CIVIL SPECIAL APPEAL NO.806/2004.
(Hazari Ram & Ors. Vs. State of Rajasthan & Ors.)

Date : 06.05.2005.

HON'BLE MR.JUSTICE N.N.MATHUR
HON'BLE MR.JUSTICE MANAK MOHTA

Mr.H.S. Sandhu, for the appellants.
Mr.H.S. Sidhu, for the respondents.
Mr.H.R. Soni, Addl. Govt. Advocate.

We have heard learned counsel for the parties and perused the order of the learned Single Judge dated 09.11.2004, dismissing the writ petition.

The appellants land irrigated by the outlet of chak No.4 MND. In the year 1980 a command land of Shri Ishar Ram killa No.1 to 2, 9-12, 19-22 total 10 bighas land was transferred from chak No.7 NDR/A to 4 MND. The said land is irrigated from the appellants chak for last more than 24 years. The respondent Shri Shree Ram and others moved an application on 17.09.2004 before the Executive Engineer, stating inter alia that by an order dated 12.09.1980, not only his land was transferred from chak No.7 NDR/A to chak No.4 MDN but the whole square No.176 34 of 25 bighas stood transferred. It was further stated that not only the land was transferred by the said order but the killas No.1 to 12 and 19 to 22 total 16 killas were declared command,

which was earlier un-command. It was stated that he came to know about the order of 1980 only on 17.02.2004 and, therefore, a prayer was made to give effect to the entire order of 12.09.1980. The appellants raised an objection before the Executive Engineer, stating inter alia that Shri Shree Ram was the owner of 15 bighas of land killas No.3 to 8 (6 bighas) 13 to 18 (6 bighas) and 13 to 15 (3 bighas) in total 15 bighas land, out of which 9 bighas is a command land and 6 bighas land is un-command land. The command land is irrigated from chak No.7 NDR/A and only 9 bighas of land is command land and in chak No.7 NDR/A no water turn has been fixed for 6 bighas un-command land. The Executive Engineer following the order of 1980 transferred the land in chak No.4 MND. The appeal against the said order has been dismissed by the Superintending Engineer. The appellants challenged both the orders by way of writ petition under Article 226 of the Constitution of India.

The learned Single Judge held that even if the orders Annexure-2 i.e the order dated 12.09.1980, Annexure-3 the order of the Executive Engineer and Annexure-4 the order of the Superintending Engineer are allowed to stand, the rights enjoyed by the appellants in the matter of timing and turn of irrigation are not going to be disturbed. In view of the finding, the learned Single Judge dismissed the writ petition.

It is contended by the learned counsel for the appellants that the learned Single Judge has committed error in considering that even if the order Annexures 2,3 and 4 are not disturbed the quantity of water or the timing and turns of irrigation enjoyed by the appellants are not going to be adversely affected. It is submitted that every water outlet has certain hours which are distributed amongst the land owners of that chak those who irrigated their land from that outlet. These hours are equally distributed amongst the land owners. Therefore, if the land of the respondents is transferred from chak No.7 NDR/A to chak No.4 MND i.e. the appellants chak that will increase 15 bighas of land in the appellants chak. As a result thereof the water turn of these 15 bighas of land will also be fixed in the same outlet from its total hours and appellants water turn will be deducted and the same shall be disturbed in between 15 bighas of the respondent land. Thus, water turn of the appellants will be reduced and they will not be able to properly irrigate their land. It is further submitted that the appellants had no knowledge of order dated 12.09.1980 as they were not party to the proceedings and the same was sought to be implemented almost after 24 years. According to the appellants the order dated 12.09.1980 is wholly without jurisdiction inasmuch as the Executive Engineer had no authority to pass such a order. Elaborate contentions have been advanced with regard to the

genuineness and validity of the order dated 12.09.1980.

Having heard learned counsel for the parties, we are of the view that the instant special appeal deserves to be allowed. The entire controversy is around the order dated 12.09.1980. Even according to the respondents the said order was not in their knowledge. They moved an application in 2004 for giving effect to the said order stating that the order was not in their knowledge. It has been pointed out that no record of the said order is available. We are of the view that the order dated 12.09.1980 being crucial, appellants be given an opportunity to address as to the correctness and genuineness of the said order before the Executive Engineer, more particularly when the same has been passed at their back. The ends of justice would meet if the matter is send back to the Executive Engineer and parties are permitted to address with respect to the validity of the order dated 12.09.1980. The appellants will be permitted to challenge the order dated 12.09.1980 without objection to the limitation. The respondents cannot take a plea of limitation as on their own saying that they filed an application before the Executive Engineer in the year 2004 i.e. almost after 24 years. They have also stated that the said order was not in their knowledge.

Consequently, the appeal is allowed. The order of the learned Single Judge 09.11.2004 is set aside. The writ petition is allowed. The order Annexure-3 passed by the Executive Engineer and order Annexure-4 passed by the Superintending Engineer are set aside. The Executive Engineer will pass a fresh order after giving an opportunity of hearing to the parties on the application filed by the respondents as well as the order dated 12.09.1980.

(MANAK MOHTA),J. **(N.N.MATHUR),J**

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